

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Garrin David Smith,)	C/A No. 6:09-2903-JFA-WMC
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
Johnny Mack Brown; Loren Grayer; Bruce)	
Pearson; City of Anderson,)	
)	
Defendants.)	

The *pro se* plaintiff, Garrin David Smith, brings this action pursuant to 42 U.S.C. § 1983, contending that he was falsely arrest and is now falsely imprisoned.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he suggests that this action should be dismissed. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on December 7, 2009. However, the plaintiff did not file any objections to the Report within the time limits prescribed.

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge has treated this as a *Bivens* action. *See Bivens v. Six Unknown Names Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 397 (1971). A *Bivens* claim is analogous to a claim under 42 U.S.C. § 1983; federal officials cannot be sued under 42 U.S.C. § 1983 and other civil rights statutes because they do not act under color of state law.

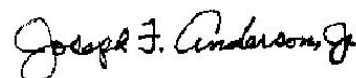
The plaintiff pleaded guilty to and was convicted of possession with intent to distribute methamphetamine and conspiracy before the Honorable G. Ross Anderson, Senior United States District Judge. His sentence was affirmed by the United States Court of Appeals for the Fourth Circuit.

As the Magistrate Judge correctly notes, this civil rights action is subject to summary dismissal because a right of action has not yet accrued. *See Heck v. Humphrey*, 512 U.S. 477 (1994). The Magistrate Judge opines that since the plaintiff has failed to establish that his conviction has been reversed, expunged or declared invalid, and no federal writ of habeas corpus has been issued, this action must be dismissed.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

January 26, 2010
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge